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**PATENT LAW AGENCY, LLC  
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GLENDALE, CA 91208-1665**

Paper No. 18

In re Application of :  
Alfred A. Margaryan :  
Application No. 10/054,328 : **DECISION ON PETITION**  
Filed: January 21, 2002 :  
Attorney Docket No. :

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a) filed October 22, 2008, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a) and (b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action mailed November 18, 2003, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 19, 2003. A Notice of Abandonment was mailed on July 1, 2004.

Petitioner filed a petition under 37 CFR 1.137(b) June 6, 2006, which was dismissed in a decision mailed April 25, 2007. A renewed petition under 37 CFR 1.137(b) was filed July 23, 2007 which was dismissed in a decision mailed June 6, 2008.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (3).

The showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 151 and 37 CFR 1.137(a). See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

Petitioner takes the position that the failure to timely reply to the final Office action of November 18, 2003 was due to the actions or inactions of Dr. Lindsay. The petition goes into great length as to the fraudulent behavior of Lindsay and that this behavior was the basis of petitioner's failure to timely file a response. As set forth in the petition, Mr. Beech was the patent attorney prosecuting this application. Mr. Illare, as managing director of the assignee, was responsible for all final decisions as to any patent matters as set forth in the Employment Agreement of August 15, 2003. Lindsay acted in the capacity of "messenger" or "go-between" between Beech and Illare.

The petition implies that Beech and Illare never communicated directly with each other from the time of the August 15, 2003 Employment Agreement until after the abandonment of the application. This lack of communication between the patent attorney and the person responsible for all decisions regarding patent matters is central to determination as to whether the abandonment of this application was unavoidable.

Taking into consideration the facts set forth in the instant petition along with the statements made in the petition under 37 CFR 1.137(b) and the renewed petition under 37 CFR 1.137(b) the record raises many questions in regard to the activities of Beech and Illare.

The application record shows that Beech filed timely responses to the first Office action (12/19/02) and the second Office action (5/30/03). Did Beech confer with and get instructions from Lindsay and/or Illare before filing these responses?

Was Illare aware of the instant patent application at the time of Employment Agreement of August 15, 2003? If not, when did he become aware of this application? Also, if he was not aware of this application at the time of the Agreement, how would he be expected to make any decisions on the prosecution of this application if he was not aware of it?

At the time Beech received the final Office action, was he aware that Illare was responsible for all final decisions regarding any patent matters? If he was not, when did he become aware of Illare's responsibility in regard to patent matters? If he was aware, at the time of receipt of the final Office action, what efforts, if any, did he take to directly contact Illare when after several attempts he was getting no reply from Lindsay?

The second paragraph on page 10 of the instant petition states that Illare made numerous requests to Lindsay for information regarding the instant application. Specifically, when were these requests made? Did Illare make any attempt to contact Beech when it was clear that Lindsay was not responding to his requests?

Answers to the above questions in regard to the activities of Beech and Illare, from all persons having first hand knowledge are required.

The Power of Attorney and Correspondence Address request filed October 22, 2008 has been accepted.

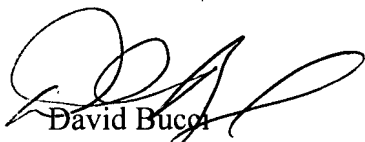
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

  
David Bucor  
Petitions Examiner  
Office of Petitions

Attachment: Notice of Acceptance of Power of Attorney